

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:08CV64-02-W  
(C-CR-83-50-P)

JAMES M. DEBARDELEBEN,                     )  
    Petitioner,                                 )  
  )  
    v.    )  
  )  
UNITED STATES OF AMERICA,                 )  
    Respondent.                               )  
\_\_\_\_\_  
  )

ORDER

THIS MATTER comes before the Court on Petitioner's form "Motion Under 28 USC § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody," filed February 19, 2008.

A review of pertinent Court records reflects that a jury convicted petitioner of eight separate violations of 18 U.S.C. § 472 in his underlying criminal case. On July 26, 1984, the Court, pursuant to the Dangerous Special Offenders statute set forth under 18 U.S.C. § 3575, sentenced Petitioner to a total of 100 years imprisonment. Petitioner's convictions and sentences were affirmed by the Fourth Circuit Court of Appeals. See United States v. DeBardleben, No. 84-5251 (4th Cir. June 7, 1985).

On April 10, 1997, Petitioner filed his first Motion to Vacate under 28 U.S.C. § 2255, setting forth multiple claims for relief (see case number 3:97CV174-P). However, this Court ultimately granted the Government's Motion to Dismiss and dis-

missed such Motion to Vacate. On appeal, the Fourth Circuit affirmed this Court's decision. See United States v. DeBardeleben, No. 98-7252 (4th Cir. Nov. 23, 1998).


Apparently undaunted by his lack of success, Petitioner filed six additional Motions to Vacate, including the instant one (see case numbers 3:01CV30-2-V; 3:02CV379-1-MU; 3:03CV469-1-MU; 3:05CV176-1-MU; and 306CV41-3-C). However, as he repeatedly has been informed by this Court, Petitioner cannot proceed with a successive Motion to Vacate without first obtaining pre-filing authorization to proceed with such a motion from the Fourth Circuit Court of Appeals.

That is, under the Antiterrorism and Effective Death Penalty Act of 1996, "[a] second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals . . . ." 28 U.S.C. § 2255. Section 2244 provides that "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244-(b)(3)(A). Inasmuch as the Petitioner fails to assert, and this Court's records fail to disclose, that he has secured the required authorization, the instant successive Motion to Vacate must be dismissed.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that Petitioner's  
Motion to Vacate is **DISMISSED without prejudice.**

**SO ORDERED.**

Signed: February 24, 2008

  
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Frank D. Whitney  
United States District Judge

